

therefrom, but we may search the record to find whether there is any substantial evidence to support the findings of the Tax Court that as a matter of fact petitioner divested himself of title to the stock by reason of his transaction with his personally owned corporation.

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"The entries made on the books of the corporation, *nothing else appearing*, do not support the Tax Court's decision that petitioner had transferred the shares of stock in question to the corporation. In determining petitioner's income tax liability as we view the law, the three transactions with the Thal Company should be ignored."

"The income tax statute deals with realities only, not with colorable subterfuge.

determination and the Tax Court's decision, but the records were relevant to the issue. The duty of determining their weight as evidence was for the Tax Court."

"Excluding the statement of the broker that 34,398 shares were sold to pay the cost of the stock, the record is barren of evidence of the detailed sales, but Gray, Shillinglaw & Company rendered a written statement to the petitioner that it had sold this number of shares at \$6 per share and thus liquidated its contribution to the joint venture. This admission is binding on Gray, Shillinglaw & Company and is sufficient evidence to support the Tax Court's conclusion that the stock was sold at \$6."

"It is apparent that the statements, memoranda and sale slips furnished by the

We are called on to decide the legal character of the transaction between petitioner and the Thal Company and in determining this issue, it is proper to take into consideration all the evidence including entries made on the books of the corporation and the facts they purport to show together with the relationship of the parties. The written record of the transaction alone will sometimes give the true answer but at other times will furnish the wrong answer if what the parties actually do is not consonant therewith."

broker to petitioner were prepared for the purpose of showing purely paper transactions. There is no proof that petitioner had actual knowledge of the entries contained in the broker's books or that he authorized such entries or caused them to be made. There is no evidence from which a legal presumption could be raised that petitioner had knowledge of the entries unless he is chargeable with such knowledge from the mere fact that he was a member of the joint venture engaged in the business of selling the stock. It may be that the broker's records were prepared for a sinister purpose and the entries were intended to conceal rather than reveal the truth as contended by petitioner, but that fact does not make them incompetent evidence."

Conclusion.

The determination of the Tax Court that petitioner derived a taxable profit from a sale of 13,760 shares of Tennessee Products stock in 1937 is without support in the primary and evidentiary facts, and the decision of the

Circuit Court of Appeals that it lacked the power to substitute its judgment for that of the Tax Court is in conflict with the applicable decisions of this Court.

Respectfully submitted,

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